

**Statement of Cecil Roberts, President
United Mine Workers of America**

**before the
Subcommittee on Energy and Mineral Resources
Committee on Resources
U.S. House of Representatives**

**Re-Authorizing the
Abandoned Mine Land Reclamation Program**

March 30, 2004

Madam Chairman, members of the Subcommittee, I am Cecil Roberts, President of the United Mine Workers of America (UMWA). The UMWA is a labor union that has represented the interests of coal miners and other workers in the United States and Canada for more than 114 years. We appreciate the opportunity to appear before the Subcommittee to discuss the Abandoned Mine Land Reclamation Fund (AML Fund) and its vital relationship to the Coal Act. Representing people who live and work in the nation's coal fields, the UMWA has a strong interest in both the reclamation of abandoned mine lands and the preservation of health care for UMWA retirees who worked hard all their lives to provide the nation with energy. We strongly support the extension of the AML program in a way that accomplishes both these goals.

The UMWA supports the goals of the Surface Mining Act and the Abandoned Mine Lands program. When enacting the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Congress found that "surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner." That statement is as true today as it was in 1977. Coal mining contributes significantly to our national economy by providing the fuel for over half of our nation's electricity generation. Coal miners are proud to play their part in supplying our nation with domestically-produced, cost-effective, reliable energy. We also live in the communities most impacted by mining and support the intent of Congress that coal mining must be conducted in an environmentally sound manner.

The AML program, financed by production fees levied on the coal industry, was designed to provide the means to reclaim lands that had been mined in previous years and abandoned before reclamation had been done. The law was amended in 1991 to permit the investment of monies held in the AML Fund to earn interest. In 1992, the Energy Policy Act extended the AML fees until 2004 and authorized the use of AML interest to pay for the cost of benefits for certain eligible retirees under the Coal Act.

The UMWA believes that when Congress authorized the use of AML interest to finance the cost of health care for retired coal miners under the Coal Act, it was a logical extension of the original intent of Congress when the AML Fund was established. Congress joined these two programs together for a specific reason—they both represent legacy costs of the coal industry that compelled a national response. When Congress created the AML Fund in 1977, it found that abandoned mine lands imposed "social and economic costs on residents in nearby and adjoining areas." When Congress enacted the Coal Act in 1992, it also had in mind how to avoid unacceptable social and economic costs associated with the loss of health benefits for retired coal miners and widows.

The UMWA Combined Benefit Fund (CBF) was created by Congress to provide health benefits to retired coal miners and their widows. Today, the Combined Benefit Fund provides health benefits to nearly 50,000 elderly beneficiaries who reside in nearly every state in the nation. The average age of the CBF beneficiary population is about 80 years, about two-thirds of them are widows and their total estimated annual health cost is about \$360 million. Congress intended for the financial mechanisms it put in place to provide self-sustaining financing of the cost of those benefits. However, rapidly rising health costs, a series of adverse court decisions, bankruptcies of major contributing employers (particularly in the steel industry), and recent low interest earnings at the AML Fund have eroded those financing mechanisms and placed the CBF in financial jeopardy. The bankruptcies have also added thousands of new orphan retirees to the UMWA 1992 Benefit Fund and the UMWA 1993 Benefit Fund, placing serious strains on the financial operations of those two plans. These continuing financial difficulties highlight the need to include Coal Act reforms in the AML re-authorization.

Congress has intervened three times in the past five years to shore up the financial condition of the CBF through emergency appropriations of interest money from the AML Fund. In December 1999, Congress provided \$68 million to cover shortfalls in CBF premiums. In October 2000, Congress appropriated up to \$96.8 million to cover deficits in the CBF's net assets through August 31, 2001. And most recently, in January 2003, Congress appropriated \$34 million from the AML interest account to the Combined Benefit Fund. In addition, the UMWA Funds and the Center for Medicare and Medicaid Services (CMS) expanded their existing nationwide, risk-sharing Medicare Demonstration project in January 2001 to include a new prescription drug component. That project was scheduled to run three years, until mid-2004, and to reimburse the Funds for 27% of its Medicare prescription drug expenditures. It is a pilot project designed to demonstrate the efficacy of providing prescription drugs under Medicare, a timely project that we believe will prove useful to CMS and Congress as we expand prescription drug coverage to the Medicare population.

I am pleased to report that the Administration, with bi-partisan support from members of Congress, recently announced an extension of the prescription drug demonstration program that will increase the percentage reimbursement and extend the program until September 30, 2005. This infusion of additional cash is certainly welcome news, as it will prevent what otherwise would have been a disastrous benefit cut. This, however, is only a temporary reprieve. There is a clear and growing bi-partisan consensus that there must be a long-term solution to the financial problems of the Coal Act.

The need for a long-term solution for the Coal Act coincides with the need to re-authorize the AML Fund. We believe the re-authorization effort can, and should, meet four broad policy objectives:

- Provide sufficient duration and level of tax to fund the reclamation needs;
- Focus on Priority 1 and 2 public health and safety projects;
- Resolve the long-standing dispute between states and OSM over the state share of

collections; and,

- Provide long-term financial security for the Coal Act benefit plans.

Two primary AML re-authorization bills have been introduced in the House of Representatives. The Administration proposal (H.R. 3778) has been introduced by Representatives John Peterson and Don Sherwood of Pennsylvania. In addition, a comprehensive AML reform bill (H.R. 3796, the Abandoned Mine Lands Reclamation Reform Act of 2004) has been introduced by Representatives Barbara Cubin of Wyoming and Nick Rahall of West Virginia. Both AML proposals extend the authority of the AML to collect the reclamation fees at a lower rate than current law mandates. Both bills appear to raise about the same amount in cumulative revenue, although there are slight differences in fee amounts and duration. However, H.R. 3778 does not provide for a long-term financial solution for the continued provision of benefits under the Coal Act. Only H.R. 3796 accomplishes that goal.

The UMWA strongly urges Congress to enact a re-authorization bill modeled on H.R. 3796, a proposal with broad bi-partisan support in the coal states. Wyoming, West Virginia and Kentucky are the nation's top three coal producing states, producing about 60% of the nation's coal output. Almost every member of the House of Representatives from these three essential coal producing states have co-sponsored H.R. 3796. If enacted, the Abandoned Mine Lands Reclamation Reform Act of 2004 would extend OSM fees for 15 years, lower the rate paid by coal producers, target greater resources to high priority reclamation sites that threaten human health and safety, resolve the long-standing dispute between the states and OSM about the state share of fee collections and provide for the long-term financial stability of the Coal Act benefit plans.

The UMWA supports this legislative effort because we know that a promise was made by the federal government and by the coal industry that these retirees would have lifetime health benefits. Today we need the help of Congress to ensure that the promise is kept, and the reforms embodied in H.R. 3796 will accomplish that. We are not alone in urging Congress to act. Over the past few years, a number of state legislatures in coal field states (Alabama, Illinois, Indiana,

Kentucky, Pennsylvania and West Virginia), along with dozens of county and city governments, have adopted resolutions urging Congress and the Administration to ensure that retired miners continue to receive the health benefits they were promised. These state and local political authorities know how important the UMWA Funds is to their state's medical infrastructure and how vitally necessary the health benefits are to the retirees and their families.

Given the need to re-authorize the Abandoned Mine lands program, and the growing bipartisan consensus that we need a long-term fix to the problems of the Coal Act, now is the time to act.

GAO Study

In 2002, the U.S. General Accounting Office (GAO) issued its most recent report on the Coal Act entitled "*Retired Coal Miners' Health Benefit Funds: Financial Challenges Continue.*" Among the findings of the GAO were that:

- the Combined Benefit Fund (CBF) faces continuing financial challenges which have been exacerbated by various adverse court decisions that have reduced the per beneficiary premiums paid to the CBF and relieved some companies of responsibility for paying for their beneficiaries;
- CBF beneficiaries traded lower pensions over the years for the promise of their health benefits and have engaged in considerable cost sharing by contributing \$210 million of their pension assets to help finance the CBF;
- the benefits provided to Coal Act beneficiaries are generally comparable to coverage provided by major manufacturing companies and companies with unionized work forces;
- CBF beneficiaries tend to be sicker, and therefore use more health care, than the average Medicare population; and

- the CBF trustees have adopted numerous managed care initiatives and have a history of achieving savings against their Medicare targets in demonstration projects, thus saving money not only for the Funds but for Medicare and the U.S. Treasury.

The most recent GAO report clearly supports the positions we have taken before Congress and the need for additional legislation. A promise made in the White House in 1946 was reaffirmed in 1992. Congress intended the Coal Act to be self-sustaining and self-financing, but subsequent court decisions have eroded that financing. There is no question that this is an elderly, frail population that is sicker than the general Medicare population and deserves the benefits they were promised. There is also no question that the Funds have aggressively managed the benefit plans and instituted state-of-the-art managed care programs that aim to improve the quality of care and reduce costs. Unfortunately, there is also no question that the nation's promise to retired coal miners will be violated if we do not enact a long-term financial solution to the Coal Act funding crisis.

This is a unique population and a unique situation. We are unaware of any other case in which a major industry-wide health and welfare plan in the private sector was created in a contract between the federal government and the workers. All three branches of our government have played substantial roles in creating, shaping and determining the fate of the UMWA Funds. The General Accounting Office clearly laid out the financial difficulties facing the Funds and more recent actuarial projections show that Congress must act in order to shore up the financial structure. Again, we encourage members of Congress to enact legislation modeled on H.R. 3796, the Abandoned Mine Lands Reclamation Reform Act of 2004.

The UMWA Health and Retirement Funds and the U.S. Government

The UMWA Health and Retirement Funds (the Funds) was created in 1946 in a contract between the United Mine Workers of America and the federal government during a time of government seizure of the mines. The contract was signed in the White House with President

Harry Truman witnessing the historic occasion.

The UMWA first began proposing a health and welfare fund for coal miners in the late-1930s but met strident opposition from the coal industry. During World War II, the federal government urged the union to postpone its demands to ensure coal production for the war effort. When the National Bituminous Wage Conference convened in early 1946, immediately following the end of the war, a health and welfare fund for miners was the union's top priority. The operators rejected the proposal and miners walked off the job on April 1, 1946. Negotiations under the auspices of the U.S. Department of Labor continued sporadically through April. On May 10, 1946, President Truman summoned John L. Lewis and the operators to the White House. The stalemate appeared to break when the White House announced an agreement in principle on a health and welfare fund.

Despite the White House announcement, the coal operators still refused to agree to the creation of a medical fund. Another conference at the White House failed to forge an agreement and the negotiations again collapsed. Faced with the prospect of a long strike that could hamper post-war economic recovery, President Truman issued an Executive Order directing the Secretary of the Interior to take possession of all bituminous coal mines in the United States and to negotiate with the union "appropriate changes in the terms and conditions of employment." Secretary of the Interior Julius Krug seized the mines the next day. Negotiations between representatives of the UMWA and the federal government continued, first at the Interior Department and then at the White House, with President Truman participating in several conferences.

After a week of negotiations, the historic Krug-Lewis agreement was announced and the strike ended. It created a welfare and retirement fund to make payments to miners and their dependents and survivors in cases of sickness, permanent disability, death or retirement, and other welfare purposes determined by the trustees. The fund was to be managed by three trustees, one to be appointed by the federal government, one by the UMWA and the third to be chosen by the other two. Financing for the new fund was to be derived from a royalty of 5 cents per ton of coal produced.

The Krug-Lewis agreement also created a separate medical and hospital fund to be managed by trustees appointed by the UMWA. The purpose of the fund was to provide for medical, hospital, and related services for the miners and their dependents. The Krug-Lewis agreement also committed the federal government to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in coal mining areas." The expressed purpose was to determine what improvements were necessary to bring coal field communities in conformity with "recognized American standards."

To conduct the study, the Secretary chose Rear Admiral Joel T. Boone of the U.S. Navy Medical Corps. Government medical specialists spent nearly a year exploring the existing medical care system in the nation's coal fields. Their report, "A Medical Survey of the Bituminous Coal Industry," found that in coal field communities, "provisions range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable."

Thus the Boone report not only confirmed earlier reports of conditions in the coal mining communities, but also established a strong federal government interest in correcting long-standing inadequacies in medical care delivery. Perhaps most important, it provided a road map for the newly created UMWA Fund to begin the process of reform.

The Funds established ten regional offices throughout the coal fields with the direction to make arrangements with local doctors and hospitals for the provision of "the highest standard of medical service at the lowest possible cost." One of the first programs initiated by the Funds was a rehabilitation program for severely disabled miners. Under this program, more than 1,200 severely disabled miners were rehabilitated. The Funds searched the coal fields to locate disabled miners and sent them to the finest rehabilitation centers in the United States. At those

centers, they received the best treatment that modern medicine and surgery had to offer, including artificial limbs and extensive physical therapy to teach them how to walk again. After a period of physical restoration, the miners received occupational therapy so they could provide for their families.

The Funds also made great strides in improving overall medical care in coal mining communities, especially in Appalachia where the greatest inadequacies existed. Recognizing the need for modern hospital and clinic facilities, the Funds constructed ten hospitals in Kentucky, Virginia and West Virginia. The hospitals, known as Miners Memorial Hospitals, provided intern and residency programs and training for professional and practical nurses. Thus, because of the Funds, young doctors were drawn to areas of the country that were sorely lacking in medical professionals. A 1978 Presidential Coal Commission found that medical care in the coal field communities had greatly improved, not only for miners but for the entire community, as a result of the UMWA Funds. "Conditions since the Boone Report have changed dramatically, largely because of the miners and their Union--but also because of the Federal Government, State, and coal companies." The Commission concluded that "both union and non-union miners have gained better health care from the systems developed for the UMWA."

The Coal Commission

In the 1980s, medical benefits for retired miners became a sorely disputed issue between labor and management, as companies sought to avoid their obligations to retirees and dump those obligations onto the UMWA Funds, thereby shifting their costs to other signatory employers. Courts had issued conflicting decisions in the 1980s, holding that retiree health benefits were indeed benefits for life, but allowing individual employers to evade the obligation to fund those benefits. The issue came to a critical impasse in 1989 during the UMWA-Pittston Company negotiations. Pittston had refused to continue participation in the UMWA Funds, while the union insisted that Pittston had an obligation to the retirees.

Once again the government intervened in a coal industry dispute over health benefits for miners. Secretary of Labor Elizabeth Dole appointed a special "super-mediator," Bill Usery, also

a former Secretary of Labor. Ultimately the parties, with the assistance of Usery and Secretary Dole, came to an agreement. As part of that agreement, Secretary Dole announced the formation of an Advisory Commission on United Mine Workers of America Retiree Health Benefits, which became known as the "Coal Commission." The commission, including representatives from the coal industry, coal labor, the health insurance industry, the medical profession, academia, and the government, made recommendations to the Secretary and the Congress for a comprehensive resolution of the crisis facing the UMWA Funds. The recommendation was based on a simple, yet powerful, finding of the commission:

"Retired miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives, and that is how they planned their retirement years. That commitment should be honored."

The underlying Coal Commission recommendation was that every company should pay for its own retirees. The Commission recommended that Congress enact federal legislation that would place a statutory obligation on current and former signatories to the National Bituminous Coal Wage Agreement (NBCWA) to pay for the health care of their former employees. The Commission recommended that mechanisms be enacted that would prevent employers from "dumping" their retiree health care obligations on the UMWA Funds. Finally, the Commission urged Congress to provide an alternative means of financing the cost of "orphan retirees" whose companies no longer existed.

The Coal Act

Recognizing the crisis that was unfolding in the nation's coal fields, Congress acted on the Coal Commission's recommendations. The original bill introduced by Senator Rockefeller sought to impose a statutory obligation on current and former signatories to pay for the cost of their retirees in the UMWA Funds, require them to maintain their individual employer plans for retired miners, and levy a small tax on all coal production to pay for the cost of orphan retirees. Although the bill was passed by both houses of Congress, it was vetoed as part of the Tax Fairness and Economic Growth Act of 1992.

In the legislative debate that followed, much of the underlying structure of the Coal Commission's recommendations was maintained, but there was strong opposition to a general coal tax to finance the benefits of orphan retirees. A compromise was developed that would finance orphans through the use of interest on monies held in the AML Fund. In addition, the Union accepted a legislative compromise that included the transfer of \$210 million of pension assets from the UMWA 1950 Pension Plan. With these compromises in place, the legislation was passed by Congress and signed into law by President Bush as part of the Energy Policy Act.

Under the Coal Act, two new statutory funds were created--the UMWA Combined Benefit Fund (CBF) and the UMWA 1992 Benefit Fund. The former UMWA 1950 and 1974 Benefit Funds were merged into the CBF, which was charged with providing health care and death benefits to retirees who were receiving benefits from the UMWA 1950 and 1974 Benefit Plans on or before July 20, 1992. The CBF was essentially closed to new beneficiaries. The Coal Act also mandated that employers who were maintaining employer benefit plans under UMWA contracts at the time of passage would be required to continue those plans under Section 9711 of the Coal Act. Section 9711 was enacted to prevent future "dumping" of retiree health care obligations by companies that remain in business. To provide for future orphans not eligible for benefits from the CBF, Congress established the UMWA 1992 Benefit Fund to provide health care to miners who retired prior to October 1, 1994 and whose employers are no longer providing benefits under their 9711 plans.

The CBF is financed by per-beneficiary premiums paid by employers with retirees in the fund. The premium is set by the Social Security Administration and is escalated each year by the medical component of the Consumer Price Index. Interest earned by the AML Fund is made available to finance the cost of orphan retirees. The remainder of CBF income derives from Medicare capitation and risk sharing arrangements, DOL Black Lung payments, investment income and miscellaneous court settlements. The benefits for orphans covered by the UMWA 1992 Fund are financed solely by operators that were signatory to the NBCWA of 1988.

In passing the Coal Act, Congress recognized the legitimacy of the Coal Commission's finding that "retired miners are entitled to the health care benefits that were promised and

guaranteed them." Congress specifically had three policy purposes in mind in passing the Coal Act:

"(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

(2) to allow for sufficient operating assets for such plans; and

(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans."

Without question, Congress intended that the Coal Act should provide "sufficient operating assets" to ensure the continuation of health care to retired coal miners. However, the financial mechanisms have been eroded and have placed the Coal Act in continuing financial crises.

Recent Court Decisions

The 2002 GAO study found that a number of court decisions have eroded the financial condition of the Combined Fund—and the legal onslaught on the Coal Act continues. While Congress clearly intended that the Coal Act be financially self-sustaining, various court decisions have undercut Congressional intent. A 1995 decision by a federal court in Alabama in NCA v. Chater overturned the premium determination by the Social Security Administration (SSA) and reduced the premium paid by employers by about 10%. Over time, the effect of this decision was to remove hundreds of millions of dollars from the financing structure of the Coal Act. A 1999 decision by the same court ordered the CBF to return about \$40 million in contributions to the employers, representing the difference between the original SSA premium rate actually paid and the rate established in NCA. The trustees of the CBF filed suit against the Social Security Administration in the District of Columbia in an attempt to set aside the NCA decision. In late-2002, the D.C. Court struck down the Social Security Administration's nationwide application of the NCA decision and ordered SSA to report to the Court what premium rate should apply to

companies not covered by the NCA decision. In June 2003, SSA notified the Court it would apply a higher premium to companies not covered by the earlier decision. However, over 200 companies have filed another action in Alabama asking to avoid paying the higher rate.

In 1998, the Supreme Court rendered a decision in Eastern Enterprises that struck down the obligation to contribute to the CBF for companies that were signatory to earlier NBCWAs but did not sign the 1974 or later contracts. Those employers were relieved of their contribution obligations in the future and the CBF returned millions of dollars in prior contributions. Most of these retirees are now part of the unassigned beneficiary pool whose benefits are funded from other sources. Since that time, a number of other companies who signed the 1974 or later NBCWAs have also attempted to convince the courts that they, too, should be relieved of their responsibility. I am pleased to report that most of these cases have now completed their appeals process, with the courts holding that the companies cannot walk away from their Coal Act obligations.

The cumulative effect of these court decisions threatened a repetition of the problems and re-creation of the crisis of the 1980s that led to the creation of the Coal Act, meaning employers have been relieved of liability for their retirees and revenues have been significantly reduced from the employers that remain obligated. Compounding the revenue loss stemming from these court decisions is the fact that the escalator used to adjust the premium for inflation (the medical component of the Consumer Price Index) is inadequate to measure the health care cost increases in a closed group of aging beneficiaries who experience annual increases in utilization. The combination of loss of income, an increasing orphan population and an inadequate escalator have led to an imminent financial crisis for Coal Act beneficiaries.

I mentioned earlier the bankruptcies of a number of steel companies that had retirees covered by the Coal Act. Recent bankruptcies at LTV, Bethlehem Steel and other integrated steel companies that operated coal mines under UMW contracts have further reduced the premiums paid to the CBF, increased orphan costs for the AML Fund, and added thousands of 9711 plan beneficiaries to the 1992 Plan. The growth in the orphan population has forced a dwindling number of employers to fund a growing burden of health care expenses for retirees

who did not work for them. The magnitude of these bankruptcies, which we believe that Congress did not anticipate when it passed the Coal Act, has exacerbated the problems of the Coal Act and reinforce the call for a long-term solution.

Now Is The Time For A Long-term Solution

Madam Chairman, there is a growing bi-partisan consensus that Congress must forge a long-term solution to the financial problems of the Coal Act. We believe that the re-authorization of the AML Fund provides the best opportunity to do so. Over their working lives, these retirees traded lower wages and pensions for the promise of retiree health care that began in the White House in 1946. In 1992, they willingly contributed \$210 million of their pension money to ensure that the promise would be kept. Everything that this nation has asked of them—in war and in peace—they have done. They are part of what has come to be called the “Greatest Generation” and deservedly so. They have certainly kept their end of the bargain that was struck with President Truman. But now they find that the promise they worked for and depended on is in jeopardy of being broken. We must stand up and say that this promise will be kept. We can do so by enacting H.R. 3796.

Madam Chairman, we thank you and the Subcommittee for the opportunity to add our support to the effort to re-authorize the AML program and to provide a long-term solution to the financial problems of the Coal Act. I would be happy to answer any questions you may have.

**Disclosure Statement for Cecil Roberts, President, United Mine Workers of America
Pursuant to House Rule XI, Clause 2(g) and Rules of the Committee on Resources**

Part A.

1. Cecil E. Roberts
2. 8315 Lee Highway, Fairfax, Virginia, 22031
3. 703 208-7200
4. International Union, United Mine Workers of America
5. Mr. Roberts graduated from West Virginia Institute of Technology in 1987 and received an honorary Doctorate in Humanities from West Virginia University Institute of Technology in 1997.
6. None.
7. Mr. Roberts has been active in the coal industry since entering the mines in 1971. He worked six years as an underground miner before being elected to union office. He has more than 30 years of experience in matters related to the coal industry and the provision of health care benefits in the coal industry.
8. Mr. Roberts was elected Vice President of UMWA District 17 in southern West Virginia in 1977, where he served until 1982. In 1982, he was elected Vice President of the UMWA International Union, a position he held until 1995. In 1995, he assumed the office of President of the UMWA International Union, a position he continues to hold today. Mr. Roberts also serves as a member of the Executive Council of the AFL-CIO.

Part B.

1. Mr. Roberts receives no federal grants that pertain to the issues in this hearing.
2. The UMWA receives no federal grants that pertain to the issues in this hearing.